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BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

*Re: Amendment of the Commission's Rules to Relocate the Digital Electronic
Message Service From the 18 GHz Band to the 24 GHz Band and to Allocate the
24 GHz Band for Fixed Service, Docket ET 97-99*

Dear Mr. Caton:

Please find enclosed for filing an original and eleven copies of Teledesic Corporation's Consolidated Opposition to Petitions to Deny in the above-referenced proceeding.

Also included is an additional copy of this filing to be date-stamped and returned with our messenger. Please contact me if you have any questions regarding this matter.

Respectfully submitted,


Kent D. Bressie

Enclosures

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U.S. DEPT. OF JUSTICE
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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In the Matter of

Amendment of the Commission's Rules to
Relocate the Digital Electronic Message
Service From the 18 GHz Band to the 24 GHz
Band and to Allocate the 24 GHz Band for
Fixed Service

ET 97-99

**CONSOLIDATED OPPOSITION OF TELEDESIC CORPORATION
TO PETITIONS FOR RECONSIDERATION**

TELEDESIC CORPORATION

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Dated: July 8, 1997

Its Attorneys

SUMMARY

Teledesic Corporation opposes the petitions for reconsideration of the Commission's relocation of the digital electronic message service ("DEMS") from the 18 GHz band to the 24 GHz band. The Commission's decision to relocate DEMS pursuant to a request by the National Telecommunications and Information Administration ("NTIA") was exempt from the notice and comment provisions of Section 553 of the Administrative Procedure Act ("APA") because it clearly "involved . . . a military or foreign affairs function of the United States."

The Commission properly complied with NTIA's two requests to relocate DEMS incumbents to the 24 GHz band in order to resolve national security concerns about interference with government operations in the 18 GHz band. The Commission's actions comport both with the APA and the Communications Act of 1934. First, the Commission properly deferred to NTIA's directive seeking clearance of DEMS licensees out of the 18 GHz band. Second, the Commission properly relied on the leading judicial precedent defining the circumstances in which the Commission may forgo notice and comment rulemaking due to national security concerns.

The Commission's actions also afforded proper procedural protections to those parties whose substantive rights are directly affected by this proceeding. The Commission observed the statutory requirements for modification of the DEMS licenses. It was not obligated to open the 24 GHz spectrum ceded by NTIA to competing commercial uses.

Because the petitions for reconsideration pose no serious obstacles to full implementation of the Commission's decision to relocate DEMS, they should be denied.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

Amendment of the Commission's Rules to
Relocate the Digital Electronic Message
Service From the 18 GHz Band to the 24 GHz
Band and to Allocate the 24 GHz Band for
Fixed Service

ET 97-99

**CONSOLIDATED OPPOSITION OF TELEDESIC CORPORATION
TO PETITIONS FOR RECONSIDERATION**

Teledesic Corporation hereby opposes the petitions for reconsideration¹ filed in the above-referenced proceeding challenging the Commission's relocation of the digital electronic message service ("DEMS") from the 18 GHz band to the 24 GHz band.² Contrary to the petitioners' characterizations of the *DEMS Relocation Order*, the Commission's decision to relocate DEMS incumbents to the 24 GHz band, pursuant to a request by the National Telecommunications and

¹ See Petition for Reconsideration of BellSouth Corporation, (filed June 5, 1997) ("BellSouth Petition"); Petition for Reconsideration of DirecTV Enterprises, Inc. (filed June 5, 1997) ("Hughes/DirecTV Petition"); Petition for Partial Reconsideration of the Millimeter Wave Carrier Association, Inc. (filed June 5, 1997) ("MWCA Petition"); Petition for Reconsideration of WebCel Communications, Inc. (filed June 5, 1997) ("WebCel Petition").

² See *Amendment of the Commission's Rules to Relocate the Digital Electronic Message Service From the 18 GHz Band to the 24 GHz Band and to Allocate the 24 GHz Band for Fixed Service: Order*, 12 F.C.C. Rcd. 3471 (1997) ("*DEMS Relocation Order*").

Information Administration ("NTIA"), was clearly one that "involved . . . a military or foreign affairs function of the United States." The *DEMS Relocation Order* was therefore exempt from the notice and comment provisions of the Administrative Procedure Act ("APA").

In their varied accounts of the DEMS relocation, the petitioners conveniently ignore NTIA's repeated requests to relocate DEMS from the 18 GHz band to the 24 GHz band to protect national security interests. The petitioners denigrate the deference that the Commission owes to NTIA when NTIA invokes the APA's military affairs exception to notice and comment rulemaking. They also ignore the leading judicial decision explaining the Commission's authority to take actions requested by NTIA as matters of national security. Correcting these distortions of the facts and the law reveals that there is no basis for questioning the propriety of the *DEMS Relocation Order*. The petitioners raise no other serious obstacles to full implementation of the *DEMS Relocation Order*, and their petitions should therefore be denied.

I. The Petitioners Have Distorted What Really Happened with Respect to the Relocation of DEMS

Most of the Petitions include a story about what the *DEMS Relocation Order* was "really" about. The petitioners, however, pay almost no attention to the single most important fact in the narrative: *The Executive Branch asked the FCC to do exactly what it did, exactly the way it did it, for national security reasons.* This fact, documented in the record by two separate requests from NTIA, makes clear that the *DEMS Relocation Order* falls comfortably within the statutory

exemption for cases in which “there is involved . . . a military or foreign affairs function of the United States.”³

Because the NTIA requests are at the heart of this controversy—and because they were almost entirely ignored by the petitioners—it is worth describing them in some detail. On January 7, 1997, Richard Parlow, the Associate Administrator of NTIA’s Office of Spectrum Management, wrote to Richard Smith, Chief of the Commission’s Office of Engineering and Technology. Parlow made clear in his very first paragraph that NTIA was asking the FCC to “protect two government earth stations,” and, to “*expeditiously undertake any other necessary actions*, such as amending the Commission’s Rules and modifying Commission issued licenses.”⁴ NTIA noted the unexpected and previously unnoticed resurgence of DEMS licensing activity, and then described the technical interference issue that gave rise to the national security interest in this case:

Based on a series of discussions with Commission staff concerning specific facilities at these locations, it is our view that *co-frequency, co-coverage use of the 17.8-20.2 GHz band by earth stations of the Government fixed-satellite service and the non-Government DEMS will not be possible within 40 km of our earth stations.*⁵

³ 5 U.S.C. § 553(a).

⁴ Letter from Richard D. Parlow, Associate Administrator, Office of Spectrum Management, NTIA, to Richard Smith, Chief, Office of Engineering and Technology, FCC, at 1 (Jan. 7, 1997) (“NTIA First Request”) (emphasis added).

⁵ *Id.* at 2 (emphasis added).

In the next sentence, NTIA noted its “understanding that the Commission views the availability of frequencies for DEMS *on a nation-wide basis* to be highly desirable.”⁶ NTIA then offered to vacate 24 GHz spectrum used by the Government so that the Commission could use that spectrum to solve the national security problem created by DEMS interference:

Taking into account our common interests, we could make available spectrum in the region of 24.25-24.65 GHz and suggest that the Commission take such steps as may be necessary to license DEMS stations in this spectrum, including modification of licenses pursuant to Section 316 of the Communications Act.

We are asking that *these actions* be undertaken *on an expedited basis*. As we have previously indicated, this matter *involves military functions, as well as specific sensitive national security interests of the United States*. These actions are essential to fulfill requirements for Government space systems to perform satisfactorily.⁷

In explication of its request that “these actions” (all of them) be undertaken “on an expedited basis,” NTIA referred to the military and foreign affairs exemption to the APA and invoked *Bendix Aviation Corp. v. FCC*.⁸

⁶ *Id.* (emphasis added). The petitioners argue that the Commission’s actions were improper because DEMS is not a nationwide service. See MWCA Petition, at 5; WebCel Petition, at 11-12. The Commission, however, has long viewed DEMS as a nationwide service. See *In the Matter of Amendment of Parts 2, 21, 87 and 90 of the Commission’s Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to, the Use of Radio in Digital Termination Systems for the Provision of Digital Communications Systems*, 86 FCC 2d 360, 369 (1981) (supporting the development of DEMS to “offer[] a truly nationwide digital communications capability”).

⁷ *Id.* (emphasis added).

⁸ 272 F.2d 533 (D.C. Cir. 1959) (“*Bendix*”), cert. denied sub nom. *Aeronautical Radio, Inc. v. United States*, 361 U.S. 965 (1960).

The NTIA First Request thus expressly acknowledged—based on interagency discussions—that relocating *part* of the DEMS service would create a brand new problem for the Commission, even if it might solve the Government’s immediate problem. NTIA did not ask the Commission to solve the Government’s problem at the expense of individual DEMS licensees; instead NTIA offered enough Government spectrum to solve the military problem *without* creating a new problem for civilian users. And NTIA asked the Commission to undertake *all* these actions “on an expedited basis,” in the name of national security.

Even one urgent national security request is, of course, sufficient to sustain the Commission’s action here. In fact, however, NTIA made a *second* request after further discussions with the Commission about the DEMS relocation. In a letter of March 5, 1997, NTIA again asked the Commission to help “minimize potential interference to the Federal Government’s receive earth station operations in the 17.8-20.2 GHz frequency band.”⁹ This time, without in any way limiting its request to Washington, D.C., and Denver, NTIA reported its determination “that *both existing and anticipated FCC licensees* could cause interference problems to the Federal Government user of the band.”¹⁰ NTIA then offered a detailed “approach for resolving these problems”¹¹—an approach which assumed that DEMS would be relocated not just in Washington, D.C., and Denver, but also in Newark, New Jersey and by

⁹ Letter from Richard Parlow, Associate Administrator, Office of Spectrum Management, NTIA, to Richard Smith, Chief, Office of Engineering and Technology, FCC, at 1 (Mar. 5, 1997) (“NTIA Second Request”).

¹⁰ *Id.* (emphasis added).

¹¹ *Id.*

implication nationwide. NTIA stated that the approach it outlined “is responsive to our combined interests and also satisfies the underlying national security requirements; therefore we propose that you issue the appropriate orders in an expeditious manner to implement this approach.”¹²

A thorough examination of NTIA’s *two* invocations of the national security exemption to the APA demonstrates that all the major details of the *DEMS Relocation Order* were expressly requested by NTIA. The record clearly demonstrates the following:

- NTIA determined that DEMS operations posed a real threat to Government space systems that perform a national security function.
- NTIA recognized that public policy strongly favors the continued operation of DEMS on a unified national frequency band.
- NTIA deemed the national security threat serious enough to require that 400 MHz of Government spectrum be surrendered to make the nationwide relocation attractive to the Commission and to DEMS licensees.
- NTIA expressly asked the Commission to accomplish *all* of this under *Bendix* and the military affairs exemption to the APA.

With this understanding of the facts, the Commission can evaluate the legal arguments in their proper light.

II. The Commission’s *DEMS Relocation Order* Comports with the Procedural Requirements of the APA and the Communications Act

Contrary to the petitioners’ assertions, the Commission observed all of the procedural requirements and protections of the APA and the Communications Act in issuing the *DEMS*

¹² *Id.* at 2.

Relocation Order.¹³ First, the Commission properly invoked the APA's military affairs exception in order to clear the 18 GHz band and relocate incumbent DEMS licensees to the 24 GHz band. Second, the Commission properly observed all procedural protections in dealing with the incumbent DEMS licensees—the private parties directly affected by the DEMS relocation—and was not required to consider competing uses for the Government frequencies that NTIA offered for the express purpose of relocating DEMS.

A. The Commission Properly Invoked the APA's Military Affairs Exception in Order to Implement NTIA's Directive

In relocating DEMS to the 24 GHz band as a means for clearing the 18 GHz band, the Commission properly acceded to NTIA's request that DEMS be relocated to 24 GHz in the interest of national security. Judicial precedent provided the Commission with ample authority for adopting NTIA's requested actions.

1. The Commission Properly Deferred to NTIA's Directive Requesting that the Commission Relocate DEMS to the 24 GHz Band as a Means for Clearing DEMS Incumbents from the 18 GHz Band

The petitioners grant that at least some aspects of the *DEMS Relocation Order* were permissible under the APA's military affairs exception.¹⁴ Nevertheless, they accuse the

¹³ We do not address the petitioners' questions regarding Associated's qualifications as a DEMS licensee or the Commission's modification of DEMS licenses to exhaust the 400 MHz of spectrum allocated for DEMS in the 24 GHz band.

¹⁴ See BellSouth Petition, at 9 (noting that "it is only the 18 GHz band . . . that has a nexus to military affairs and national security"); Hughes/DirecTV Petition, at 5 (allowing that the relocation of DEMS licensees in Washington, D.C., and Denver was permissible); MWCA Petition, at 4-5 (admitting that many aspects of the Commission's clearing of the 18 GHz band were permissible under the APA); WebCel Petition, at 9-13, 19 (objecting to the invocation of the military affairs exception to relocate DEMS to the 24 GHz band and requesting that the

[Footnote continued on next page]

Commission of bootstrapping a variety of actions onto interference concerns in Washington, D.C., and Denver.¹⁵ They fail, however, to come to terms with the fact that NTIA itself requested that DEMS be relocated to the 24 GHz band, on a nationwide basis, in order to clear DEMS incumbents from the 18 GHz band.

The record belies any claim that the move to 24 GHz was “bootstrapped” onto a more limited request from NTIA. The 400 MHz surrendered by NTIA was previously used for Government radionavigation; NTIA alone had the power to withdraw the Government allocation in those frequencies. In both the NTIA First Request and the NTIA Second Request, NTIA determined that national security interests would be best served by clearing the spectrum of Government users and dedicating it instead to the DEMS relocation. Indeed, the NTIA Second Request, in which NTIA described in detail the final terms of the relocation adopted by the Commission, nowhere suggests that NTIA’s national security concerns related only to the relocation of DEMS in Washington, D.C., and Denver.

The comprehensiveness of the two NTIA requests should end the inquiry. As the APA implicitly recognizes, agencies such as the Commission are not military agencies and are not competent to make military judgments. The petitioners appear to advocate an administrative regime under which the Commission second-guesses NTIA invocations of national security in

[Footnote continued from previous page]

Commission vacate the relocation provisions of the *DEMS Relocation Order*). WinStar, which sought “clarification” rather than reconsideration of the *DEMS Relocation Order*, did not challenge the Commission’s reliance on the military affairs exception. See *Petition for Clarification of WinStar Communications, Inc.* (filed June 5, 1997).

¹⁵ See, e.g., *WebCel Petition*, at 11.

order to ensure NTIA is not giving up more spectrum than necessary, but neither reason nor authority supports the suggestion that the Commission should play such a role.

2. The Commission's Continued Reliance on *Bendix* Was Proper and Consistent with the Requirements of the APA

As in the Commission's order authorizing Government use of the 17.8-20.2 GHz band,¹⁶ the Commission's reliance on *Bendix* to relocate DEMS was procedurally proper. The petitioners, however, either ignore or artificially distinguish *Bendix*, the leading case defining when the Commission may forgo notice and comment procedures for national security reasons.¹⁷ In *Bendix*, the D.C. Circuit considered whether or not the Commission had properly dispensed with notice and comment procedures in (1) reallocating the 420-450 MHz and 8.5-9.0 GHz bands for exclusive Government use at the request of the Office of Defense Mobilization ("ODM"), and (2) relocating the displaced commercial services to the 13.0 GHz band.¹⁸ The ODM represented to the Commission that the redesignation of the bands in question for exclusive use by Government services must be made "at this time" and that such reallocation was necessary "because of the vital national defense considerations involved."¹⁹ The Commission agreed to

¹⁶ *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum for the Fixed-Satellite Service in the 17.8-20.2 GHz Band for Government Use*, 10 F.C.C. Rcd. 9931, 9932 (1995).

¹⁷ See BellSouth Petition (altogether ignoring *Bendix*); MWCA Petition (altogether ignoring *Bendix*); Hughes/DirecTV Petition, at 17 n.52 (admitting that *Bendix* would allow the Commission to move DEMS out of the 18 GHz band in Washington, D.C., and Denver, but is inapposite with respect to other Commission actions); WebCel Petition, at 12 (arguing that *Bendix* is not analogous because it was not an APA case).

¹⁸ *Bendix*, 272 F.2d at 539-42.

¹⁹ See *id.* at 533.

ODM's request, which required that it relocate incumbent licensees (mainly commercial airlines operating radar equipment) from the 8.8 GHz band to the 13.0 GHz band.²⁰ Even in the absence of an express request by ODM that incumbent users be relocated to 13.0 GHz, the D.C. Circuit affirmed the Commission's actions, stating that it was "satisfied that the Commission, confronted by the demands of the Executive for exclusive use of the frequency in question, had thus undertaken to do whatever was reasonably open to it in the light of national defense needs."²¹

The *Bendix* case closely parallels the DEMS relocation. In both cases, the Commission implemented courses of action proposed by the Executive Branch in order to protect national security interests. In both cases, the band-clearing required for national security reasons also required the Commission to relocate existing commercial licensees that posed interference problems. In both cases, the Commission relied on national security exceptions to procedures otherwise mandated by statute in order to implement the Government's military objectives with a minimum of compromise. The petitioners' arguments that *Bendix* is not controlling in the present case strain credulity.

First, the petitioners principally rely on a case in which a civilian agency itself, and not the Executive Branch acting on behalf of the Department of Defense ("DoD"), articulated the national security interest as the basis for invoking an APA exception.²² In *Independent Guard*, the

²⁰ *Id.* at 541.

²¹ *Id.* at 542.

²² See *Independent Guard Ass'n of Nevada v. O'Leary*, 57 F.3d 766 (9th Cir. 1995) ("*Independent Guard*"), amended and reh'g denied, 69 F.3d 1038 (9th Cir. 1995).

Department of Energy (“DoE”) made its own national security judgment in deciding not to subject its personnel policy for civilian subcontractors to notice and comment rulemaking. The Ninth Circuit found that DoE judgment was a civilian one except to the extent that it performed a military function.²³ In *Bendix* and in the present case, however, the Executive Branch acting at the request of DoD—and not the Commission—articulated the actions to be undertaken to protect national security interests. NTIA explicitly requested a relocation based on these national security concerns, and the Commission complied with that request.

Second, WebCel attempts to argue that *Bendix* is not controlling because it was not an APA case.²⁴ To the contrary, *Bendix* is both an APA case and a Section 553 case. *Bendix* involved two separate Commission actions in which the Commission found that “it was impracticable and contrary to the public interest to comply with the public notice requirements of Section 4 of the Administrative Procedure Act.”²⁵ In 1966, this section was renumbered as Section 553 of the APA.²⁶ *Bendix* thus interpreted the exact provision on which the Commission relied in the *DEMS Relocation Order*.

Moreover, *Bendix* precludes the Commission from second-guessing the Executive Branch’s judgment regarding national security matters. In *Bendix*, the court found that the

²³ *Independent Guard*, 57 F.3d at 769.

²⁴ *See* WebCel Petition, at 12.

²⁵ *Bendix*, 272 F.2d at 536.

²⁶ Pub. L. 89-554, 80 Stat. 383 (Sept. 6, 1966). Section 553 was recodified from 5 U.S.C. § 1003 to 5 U.S.C. § 553.

Commission must not usurp the Executive Branch's role in formulating national defense needs.

"The field in which Government need for radiopositioning was deemed paramount involved interdepartmental expertise and the exercise by the President through [ODM] of decisional prerogatives which had not been entrusted to the Commission by the Act."²⁷ Having found that the Executive Branch exercised its military expertise and decisional prerogatives, the court concluded that the Commission was obligated to defer to the Executive Branch. "Granted the necessity for meeting essential national defense requirements, we fail to see how the Commission had any other alternative."²⁸

The *Bendix* decision also undermines the petitioners' claim that the Commission must take actions effective immediately to invoke the APA's military affairs exception properly. The petitioners claim that because some DEMS incumbents need not migrate to the 24 GHz band immediately, the Commission is obligated to engage in notice-and-comment rulemaking pursuant to Section 553.²⁹ In *Bendix*, however, the D.C. Circuit found it proper for the Commission to act without notice and comment proceedings even though the Commission granted commercial licensees in the "old band" sufficient time to develop appropriate equipment allowing them to use the "new band" reallocated to their services.³⁰ Similarly in the present case, the Commission has allowed DEMS licensees to remain in the 18 GHz band pending the phasing out of Government

²⁷ *Id.* at 542.

²⁸ *Id.*

²⁹ See MWCA Petition, at 11; WebCel Petition, at 13..

³⁰ *Bendix*, 272 F.2d at 541-42.

operations in the 24 GHz band. The court's interpretation of the national security exception in *Bendix* means that the relocation of DEMS need not be immediate in order to qualify as a matter of national security.

B. The Commission Properly Observed All Procedural Protections in Dealing with Those Parties Whose Substantive Rights Are Directly Affected by This Proceeding

The only substantive rights holders adversely affected by the Commission's *DEMS Relocation Order*—incumbent DEMS licensees—were given proper notice and opportunity to comment as required by Section 316 of the Communications Act.³¹ As the MWCA Petition correctly notes, the APA's Section 553 exceptions are “an attempt to preserve agency flexibility in dealing with limited situations where substantive rights are not at stake.”³² The *DEMS Relocation Order* notified the DEMS incumbents of the proposed modifications and provided for further actions consistent with Section 316 of the Communications Act:

Incumbent licensees will have 30 days from the date of release of this Order to protest the license modification consistent with Section 316 of the Communications Act of 1934, as amended. The Chief, Wireless Telecommunications Bureau, is instructed to notify the incumbent DEMS licensees of this Order on the release date pursuant to Section 1.87 of the Commission's Rules.³³

³¹ 47 U.S.C. § 316 (providing that no modification order is final “until the holder of the license or permit shall have been notified in writing of the proposed action and the grounds and reasons therefore, and shall be given reasonable opportunity, of at least thirty days, to protest such proposed order of modification”).

³² MWCA Petition, at 13 (quoting *American Hosp. Ass'n v. Bowen*, 834 F.2d 1037, 1045 (D.C. Cir. 1987)).

³³ *DEMS Relocation Order*, 12 F.C.C. Rcd. at 3478-79.

The Commission accorded full procedural protections to the DEMS licensees affected by the *DEMS Relocation Order*. Unsurprisingly, no one took advantage of these procedures to protest the license modifications.³⁴ To the extent that the *DEMS Relocation Order* raised serious issues regarding the modification of DEMS licenses, they would have been remedied by the actions of the Wireless Telecommunications Bureau in the ensuing modification proceedings.

Of the petitioners, Hughes/DirecTV asserts the most aggressive claim to have substantive rights at issue in the DEMS relocation. In fact, its interests are the most tenuous.

Hughes/DirecTV desires to expand its BSS system using spectrum in the 24 GHz band, yet it lacks any substantive rights that would allow it to claim that it was harmed by the Commission's *DEMS Relocation Order*. Contrary to Hughes/DirecTV's assumption, the Commission was not required to open the 24 GHz spectrum ceded by NTIA for competing commercial uses.³⁵ NTIA offered the spectrum at 24 GHz specifically for DEMS in order to clear the 18 GHz band, presumably because NTIA recognized that U.S. Government operations at 18 GHz would not be fully protected until the incumbent DEMS licensees were not only removed from the 18 GHz band but successfully relocated to a new band. NTIA traded 400 MHz of Government allocations for a reduction in likely interference to Government earth stations, and the Commission accepted NTIA's proposal on the basis of NTIA's national security concerns. Furthermore, as

³⁴ See *Amendment of the Commission's Rules to Relocate the Digital Electronic Message Service from the 18 GHz band to the 24 GHz Band and to Allocate the 24 GHz Band for Fixed Service*: Order, DA 97-1285, ¶ 4 (Wireless Tel. Bureau) (rel. June 24, 1997).

³⁵ See *Rainbow Broadcasting Co. v. FCC*, 949 F.2d 415, 409-11 (D.C. Cir. 1991).

Hughes/DirecTV readily admits, the 24 GHz band is not allocated domestically for BSS systems.³⁶

By arguing that the disposition of the 400 MHz offered by NTIA must be subject to full, notice-and-comment rulemaking in which *all possible uses of the band* must be considered, the petitioners advocate a rule that would greatly diminish the flexibility of NTIA and the Commission in dealing with future frequency conflicts between Government and commercial users. The petitioners all claim, to one degree or another, that NTIA may not resolve such conflicts by ceding blocks of spectrum for particular purposes. If such a rule were adopted, NTIA would have little incentive to do the type of creative problem-solving that occurred here, and the Commission would be left to balance commercial and national security interests on its own. Such a state of affairs would be inimical both to the public interest which the Commission is supposed to promote, and to the national security interests that NTIA is supposed to protect. Here, NTIA requested and the Commission adopted the more sensible approach of protecting incumbents with established rights, but otherwise forgoing public comment about NTIA's preferred solution to the national security issue. No provision of the APA requires a different result.

CONCLUSION

For the foregoing reasons, the petitions for reconsideration of the Commission's *DEMS Relocation Order* should be denied. The Commission properly complied with NTIA's two requests to relocate DEMS incumbents to the 24 GHz band without notice and comment. None

³⁶ See Hughes/DirecTV Petition, at 4.

of the petitioners has raised any other serious obstacles to full implementation of the Commission's *DEMS Relocation Order*.

Respectfully submitted,

TELEDESIC CORPORATION



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Dated: July 8, 1997

WL971870.005/14+

CERTIFICATE OF SERVICE

I, Kent D. Bressie, do hereby certify that a copy of the foregoing Consolidated Opposition to Petitions for Reconsideration of Teledesic Corporation have been sent by first class mail, postage prepaid, on this 8th day of July, 1997 to the following:

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